

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**L.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
San Mateo, CA, Employer**

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**Docket No. 08-1678  
Issued: May 12, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 27, 2008 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 14, 2008 which terminated her benefits. She also appealed an April 21, 2008 decision denying her request for an oral hearing as untimely. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

**ISSUES**

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits for her accepted emotional condition effective January 14, 2008; and (2) whether the Office properly denied appellant's request for an oral hearing.

**FACTUAL HISTORY**

On January 9, 2003 appellant, then a 42-year-old letter carrier, filed an occupational disease claim alleging that she developed traumatic stress disorder from strict time constraints in

performing her duties as a letter carrier and to disciplinary actions by her supervisors.<sup>1</sup> On August 20, 2004 the Office accepted that appellant developed temporary aggravation of post-traumatic stress disorder and aggravation of major depression, recurrent in partial remission.<sup>2</sup> Appellant stopped work on October 18, 2002 and did not return.

On September 29, 2004 the Office requested that Dr. Kenner review job offers made by the employing establishment on March 3, 2004 for a mail processing clerk and mail handler and address whether appellant was capable of performing these positions. In an October 3, 2004 report, Dr. Kenner indicated that appellant could return to work in a clerical position but not the positions set forth in the March 3, 2004 reassignment offer due to the stressful environment.

On December 17, 2004 the employing establishment advised the Office that it had prepared modified positions for appellant that her treating physician found to be unsuitable. The employing establishment indicated that no other positions were available. On December 27, 2004 the Office referred appellant for vocational rehabilitation. On April 20, 2005 a rehabilitation plan was prepared with the objective of obtaining a position as a medical secretary or patient information clerk.

In a September 26, 2006 report, Dr. Kenner indicated that appellant's personal problems and recent separation from her husband made it impossible for her to complete her studies as a medical secretary. She diagnosed adjustment disorder with mixed anxiety and depressed mood and post-traumatic stress disorder. Dr. Kenner was not sure when appellant could continue her studies.

The rehabilitation counselor noted that appellant's case was in interrupted status as of November 14, 2006 due to personal issues. She indicated that appellant obtained a part-time volunteer position as an intern at Mission Neighborhood Health Center starting November 13, 2006. A December 14, 2006 telephone conference among the rehabilitation counselor, the rehabilitation specialist and the claims examiner noted that, while appellant did not complete training due to personal issues, she completed enough training to begin placement in related work. Appellant began to work 10 hours per week.

In a report dated December 14, 2006, Dr. Kenner opined that appellant could work part time and endorsed an assisted reemployment plan with appellant's current employer.

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<sup>1</sup> Appellant worked for the employing establishment since 1990 as a letter carrier. She noted that, on June 20, 1997, she was sexually assaulted while at Kaiser Permanente, in an incident unrelated to her work. Appellant stated that her life changed completely after the sexual assault. She was treated by Dr. Jane Kenner, a licensed clinical psychologist, for post-traumatic stress disorder. On May 4, 2000 Dr. Keener returned appellant to work five hours per day light duty.

<sup>2</sup> The Office referred appellant for a second opinion to Dr. William A. Anderson, a Board-certified psychiatrist, who opined in reports dated July 16, August 9 and October 24, 2004, that compensable employment factors aggravated appellant's preexisting post-traumatic stress disorder and caused a recurrent depression. Dr. Anderson indicated that appellant's difficulty in keeping up with the structured demands of her job noting that her timed duties included casing mail, pulling mail, arranging mail, getting the mail to and from her route and delivering her mail route and that she was required to stay up to 45 minutes longer than her restrictions allowed in order to meet job deadlines. He indicated that appellant would be able to return to work in a low stress clerical position.

On March 9, 2007 the rehabilitation counselor noted that appellant obtained part-time work, 20 hours per week, at the Mission Neighborhood Health Center at a salary of \$16.83 per hour. The position was temporary and her job title was outreach coordinator. In an April 24, 2007 telephone conference memorandum with appellant and the rehabilitation counselor, the Office noted that appellant's current position as an outreach coordinator was full time; however, she had only performed in-office duties on a part-time basis. Appellant advised that she was unable to perform outreach in the community due to her condition but the employer was committed to finding her another position in the organization.

In a May 4, 2007 work capacity evaluation, Dr. Kenner advised that appellant could not work eight hours per day due to insomnia and nightmares that caused her to be exhausted. She noted that appellant reacted with anxiety and poor concentration when asked to perform a new task. Dr. Kenner opined that appellant could currently work 4 hours per day, 20 hours per week and anticipated that, by September 4, 2007, she would be able to work 8 hours per day. She reviewed the job descriptions of an appointment clerk or general clerk which would be suitable if appellant was unable to continue to work her current job. Dr. Kenner noted that appellant must work in a job which is low key without too much pressure.

On June 4, 2007 the Office referred appellant to Dr. Donald H. Stanford, a Board-certified psychiatrist, for a second opinion. In a letter of the same date, appellant was referred for psychological testing with Dr. Roslyn D. Wright, a clinical psychologist.

In a June 8, 2007 report, Dr. Kenner reiterated that appellant had post-traumatic stress disorder. She noted that appellant returned to work part time at a health clinic as a volunteer and became a paid employee in April 2007. Dr. Kenner stated that appellant had poor concentration, was overwhelmed by multitasking, and had to review her work often and correct mistakes. She opined that appellant could not work full time in the foreseeable future. Dr. Kenner noted that appellant's cumulative experience over the prior 10 years wore her down and reduced her stamina. She described appellant as traumatized from years of struggle with the employing establishment, mistreatment on the job in response to her disability and insomnia. Dr. Kenner opined that requiring appellant to work full time could worsen her condition.

In a June 20, 2007 report, Dr. Wright provided the results of the Minnesota Multiphasic Personality Inventory 2 and noted that appellant appeared to have depressive disorder and possible dysthymic disorder or major affective disorder.

In a July 17, 2007 report, Dr. Stanford noted examining appellant on July 12, 2007 and discussed her work history. Upon examination, appellant was tense and guarded. Dr. Stanford reported problems with concentration, poor energy level and was stressed by everything. He advised that appellant reported possible paranoid ideation, as she felt she was being followed, had nightmares and often felt depressed. Dr. Stanford advised that appellant was not capable of working full time in a position similar to her current part-time position or that of a general clerk or appointment clerk. He opined that appellant's inability to work full time was not the result of her accepted aggravation of post-traumatic stress disorder or depression. Rather, it was due to her preexisting underlying post-traumatic stress disorder and possible sleep apnea. Dr. Stanford diagnosed post-traumatic stress disorder related to the event of 1997 and an abusive marriage. He also diagnosed a sleep disorder which involved sleep apnea and a related psychiatric

diagnosis of breathing-related sleep disorder. Dr. Stanford opined that appellant's anxieties, fear, concentration problems, and fatigue were nonindustrial or preexisting. He advised that there were no work limitations resulting from her accepted disability. Dr. Stanford found that appellant was restricted to working her present hours and working in what she believed to be a safe environment. He opined that, with treatment of her possible sleep apnea and further success in her present occupational endeavor, it was likely appellant could work full time. In a work capacity evaluation, Dr. Stanford noted that appellant could not work eight hours per day due to anxiety and possible sleep apnea. He advised that within 12 months appellant could work full time.

In a supplemental report dated September 10, 2007, Dr. Stanford responded to the Office's request for further information.<sup>3</sup> He opined that there were several possible explanations for appellant's continuing psychiatric symptoms including that her employment with the employing establishment caused an aggravation of her preexisting post-traumatic stress disorder and related psychiatric disability. Dr. Stanford noted that a more fundamental explanation was that appellant's job at the employing establishment was a passive stage on which her preexisting psychiatric symptoms and related disability were inevitably manifested. He found, however, that any contribution to appellant's psychiatric symptoms by her accepted post-traumatic stress disorder ceased when appellant left employment. Dr. Stanford opined that appellant's job at the employing establishment did not cause an aggravation, temporary or permanent, of post-traumatic stress disorder. Rather, due to her preexisting post-traumatic stress disorder, appellant was unable to perform the usual duties of her job. Dr. Stanford noted that appellant did not have any symptoms or disturbing memories involving her employing establishment job and opined that any possible aggravation of appellant's post-traumatic stress disorder had ceased. He advised that appellant's continuing psychiatric problems and disabilities preexisted her job with the employing establishment and were now manifested on the passive stage of her present employment. Dr. Stanford reviewed the psychological testing performed on June 18, 2007 and opined that it showed dysthymic or major depressive disorder along with paranoid personality disorder. He advised that the testing was relevant to the question of an aggravation of post-traumatic stress disorder in that post-traumatic stress disorder was not predicted. Dr. Stanford opined that the absence of a predicted post-traumatic stress disorder in appellant's psychological testing supported that her post-traumatic stress disorder was only temporarily and not permanently aggravated by her job at the employing establishment.

On November 15, 2007 the Office proposed to terminate compensation benefits. In a letter dated December 12, 2007, appellant reiterated her allegations of workplace harassment and indicated that her claim was based on an aggravation of her disability due to the harassment and mockery of her supervisors. She noted having continued nightmares, fears of being followed, anxiety at not being able to finish a task and being startled easily. Appellant disputed Dr. Stanford's findings and asserted that he ignored her work history.

By decision dated January 14, 2008, the Office terminated appellant's compensation benefits effective January 20, 2008. It found that the weight of the medical evidence established

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<sup>3</sup> In an August 14, 2007 letter, the Office asked Dr. Stanford to further explain his opinion on the cause of appellant's continuing condition.

that appellant had no continuing psychiatric disability resulting from her accepted employment condition.

In an appeal request form dated and postmarked February 14, 2008, appellant requested an oral hearing before an Office hearing representative. In an accompanying statement, she requested additional time to submit documentation from her physicians.

By decision dated April 21, 2008, the Office denied appellant's request for an oral hearing. It found that the request was not timely filed. The Office also considered the matter in relation to the issues involved and further denied the request for the reason that the issues in this case could be addressed by requesting reconsideration.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>4</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted appellant's claim for temporary aggravation of post-traumatic stress disorder and aggravation of major depression, recurrent in partial remission. Dr. Kenner, appellant's treating clinical psychologist, submitted reports advising that appellant remained partially disabled due to her employment-related conditions.

The Office referred appellant to Dr. Stanford, a psychiatrist, for a second opinion. In a July 17, 2007 report, Dr. Stanford noted examining appellant and diagnosed post-traumatic stress disorder related to the 1997 nonwork-related assault, an abusive marriage and sleep apnea. He reported that appellant's anxieties, fear, concentration problems and fatigue were nonindustrial or preexisting conditions. Dr. Stanford noted that appellant was not capable of working full time but explained that this was not the result of her accepted conditions of aggravation of post-traumatic stress disorder or major depression but was due to her preexisting underlying post-traumatic stress disorder and sleep apnea. He indicated that there were no work limitations resulting from appellant's accepted work condition, which had ceased. In a work capacity evaluation, Dr. Stanford noted that appellant could not work eight hours per day due to anxiety and possible sleep apnea but could return to full-time work within 12 months.

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<sup>4</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>5</sup> *Mary A. Lowe*, 52 ECAB 223 (2001).

<sup>6</sup> *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

In a September 10, 2007 supplemental report, Dr. Stanford opined that any employment contribution to appellant's psychiatric symptoms ceased when she left her job. He noted that appellant did not have any symptoms or disturbing memories involving her job at the employing establishment that any aggravation of her post-traumatic stress disorder ceased. Dr. Stanford opined that appellant's job at the employing establishment did not cause an ongoing aggravation of post-traumatic stress disorder. Due to her preexisting post-traumatic stress disorder, appellant was unable to perform the usual duties of her job. Dr. Stanford advised that appellant's continuing psychiatric problems were due her underlying emotional conditions and were now manifesting themselves on the passive stage of her present employment. He advised that psychological testing indicated that post-traumatic stress disorder was not predicted. The absence of a predicted post-traumatic stress disorder in appellant's psychological testing further supported that her post-traumatic stress disorder was only temporarily and not permanently aggravated by her employing establishment job.

Appellant submitted reports from Dr. Kenner, including a work capacity evaluation dated May 4, 2007 noted that appellant could only work four hours daily and could possibly work full time in the future. Likewise, in a report dated June 8, 2007, Dr. Kenner diagnosed post-traumatic stress disorder. She noted that appellant returned to work part time at a health clinic on November 13, 2006. Dr. Kenner opined that appellant was not now and was not going to be capable of working full time in the foreseeable future because of poor concentration, being overwhelmed by having to multitask, low stamina, trauma from her years of struggle with the employing establishment, mistreatment on the job and insomnia. However, her reports do not specifically explain the reasons why any continuing psychiatric condition, disability or restrictions were causally related to the accepted employment injury.<sup>7</sup> For example, Dr. Kenner failed to explain how appellant's inability to work full time, her poor concentration, inability to multitask and low stamina resulted from the accepted employment conditions.

The Board finds that the opinion of Dr. Stanford represents the weight of the evidence and establishes that appellant's work-related conditions have resolved. Dr. Stanford indicated that appellant did not have residuals from her accepted condition and explained why appellant's continuing work restrictions were attributable to her preexisting conditions. There is no reasoned contemporaneous medical evidence supporting appellant's claim for continuing disability and residuals.

For these reasons, the Office met its burden of proof in terminating appellant's benefits for the accepted temporary aggravation of post-traumatic stress disorder and aggravation of major depression.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8124(b)(1) of the Federal Employees' Compensation Act provides that "a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim

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<sup>7</sup> See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

before a representative of the Secretary.”<sup>8</sup> Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>9</sup> Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, the Office may within its discretionary powers grant or deny appellant’s request and must exercise its discretion.<sup>10</sup> The Office’s procedures concerning untimely requests for hearings and review of the written record are found in the Federal (FECA) Procedure Manual, which provides:

“If the claimant is not entitled to a hearing or review (*i.e.*, the request was untimely, the claim was previously reconsidered, etc.), [the Office] will determine whether a discretionary hearing or review should be granted and, if not, will so advise the claimant, explaining the reasons.”<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

Appellant requested a hearing in an appeal request form and in a letter dated February 14, 2008. Section 10.616 of the federal regulations provide: “The hearing request must be sent within 30 days (as determined by postmark or other carrier’s date marking) of the date of the decision for which a hearing is sought.”<sup>12</sup> The case record contains a copy of the envelope which is also postmarked February 14, 2008. The postmark on the envelope, February 14, 2008, is more than 30 days from issuance of the January 14, 2008 decision. Therefore, the Board finds that appellant’s request for review of the written record was not timely. The 30-day time period for determining the timeliness of appellant’s request for a review of the written record commences on the first day following the issuance of the Office’s decision.<sup>13</sup> As the Office’s decision was issued on January 14, 2008, the 30-day period for requesting a review of the written record began to run on January 15, 2008 and the last or 30<sup>th</sup> day was February 13, 2008. Since appellant’s request for a review of the written record was postmarked February 14, 2008, it was untimely as it fell on the 31<sup>st</sup> day after the issuance of the Office’s decision. Accordingly, appellant was not entitled to a review of the written record as a matter of right.

While the Office also has the discretionary power to grant a hearing or review of the written record when a claimant is not entitled to a hearing or review as a matter of right, the Office, in its April 21, 2008 decision, properly exercised its discretion by stating that it had considered the matter in relation to the issue involved and had denied appellant’s request for a

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<sup>8</sup> 5 U.S.C. § 8124(b)(1).

<sup>9</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>10</sup> *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4 (b)(3) (October 1992).

<sup>12</sup> 20 C.F.R. § 10.616.

<sup>13</sup> *See Donna A. Christley*, 41 ECAB 90, 91 (1989). *See also John B. Montoya*, 43 ECAB 1148, 1151-52 (1992).

oral hearing on the basis that the case could be resolved by submitting additional evidence to the Office in a reconsideration request. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>14</sup> In the present case, the evidence does not indicate that the Office committed any act in connection with its denial of appellant's request for an oral hearing, which could be found to be an abuse of discretion. For these reasons, the Office properly denied appellant's request for an oral hearing under section 8124 of the Act.

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate benefits effective January 20, 2008. The Board further finds that the Office properly denied appellant's request for a review of the written record as untimely.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 21 and January 14, 2008 are affirmed.

Issued: May 12, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>14</sup> *Samuel R. Johnson*, 51 ECAB 612 (2000).